

# Sanctioned Russian companies and individuals now protected against lawsuits in foreign courts and arbitral tribunals

Russia · 22.06.2020

Available languages: [RU](#)

---

On 19 June 2020, **amendments\*** to the Commercial Procedure Code of the Russian Federation came into force, which provide for the exclusive jurisdiction of Russian courts to consider disputes involving Russian individuals and legal entities who are subject to international sanctions.

## New rights

Under new Article 248.1 of the Russian Commercial Procedure Code, disputes involving sanctioned individuals and entities fall within the exclusive jurisdiction of the Russian commercial courts, unless otherwise provided for by an international treaty of the Russian Federation or by agreement of the parties to the dispute.

The amendments protect both Russian citizens and legal entities that have fallen under foreign sanctions, and foreign individuals and entities who are caught by restrictive measures due to the sanctions imposed on Russian individuals or entities (e.g. foreign entities deemed affiliated with Russian individuals or entities under sanctions).

Individuals and entities described above can apply for a dispute to be resolved in a Russian commercial court at their location, provided that no similar dispute has been brought before a foreign court or international arbitration tribunal.

If the parties to a dispute have agreed to refer the dispute to a foreign court or international arbitration tribunal, but – due to the introduction of restrictive measures – the Russian individual or entity is not able to participate in the consideration of the dispute, the agreement is unenforceable because it has created an obstacle to access to justice, and the rules on the exclusive jurisdiction of the Russian courts apply.

A Russian individual or entity subject to sanctions, however, can participate in and accept the competence of a foreign court or arbitration tribunal to consider a dispute, and the decision of such a court or tribunal will be subject to enforcement in Russia.

In addition, Russian individuals and entities under sanctions can now file an application with a Russian court to ban the initiation (if there is evidence that proceedings will commence) or continuation of proceedings in a foreign court or international arbitration tribunal located outside the Russian Federation (new Article 248.2 of the Commercial Procedure Code). The court will consider the application in a hearing, which the parties to the current or potential dispute will be invited to attend. If the application is successful, the court ruling must indicate those claims that cannot be considered in a foreign court or arbitration tribunal. The court may also order the party subject to such a ban to pay the claimant up to the amount of the claims and court costs if the party fails to comply with this court ruling.

## Comments

The amendments are aimed at increasing access to justice for Russian companies and individuals who are experiencing difficulties protecting their interests during proceedings in foreign courts and arbitration tribunals because they are subject to foreign restrictive measures. However, the provision of the exclusive competence of Russian commercial courts at the level of national legislation (rather than at the level of international treaties) may give rise to a conflict of jurisdictions and, as a result, parallel proceedings in Russian and foreign courts. This in turn could give rise to legal uncertainty for foreign counterparties of sanctioned entities and individuals.

Sanctioned Russian companies and individuals can waive the rights provided by the amendments by accepting the foreign competence, but there is a risk that in some circumstances foreign judgments of this kind could be impossible to enforce in Russia as they would contradict Russian public order (e.g. when, due to sanctions, the Russian party is not able to attend hearings at the court or arbitral tribunal that settles the dispute). Therefore, foreign companies and individuals should review their cross-border transactions with Russian sanctioned persons and, if necessary, renegotiate dispute resolution clauses.

The amendments came into force on 19 June 2020 and will protect Russian entities in new proceedings that were initiated after that date. Still it is unclear whether its provisions apply to proceedings which are already underway in foreign courts.

If foreign counterparties are currently negotiating contracts with sanctioned counterparties, they should carefully select the jurisdictions in which they want their disputes to be settled. As for contracts concluded before 19 June 2020, foreign counterparties should try to negotiate amendments and choose a court or tribunal that the sanctioned party is able to attend. However, it is currently unclear how and to what extent the Russian courts will apply the new rules.

If you have any questions on this eAlert, do not hesitate to contact CMS Russia experts [Sergey Yuryev](#), [Tatiana Sviridova](#) or your regular contact at CMS Russia.

\* *In Russian*

#### KEY CONTACTS

---



**Sergey Yuryev**

Partner | Head of Dispute Resolution, Moscow



**Tatiana Sviridova**

Associate | Dispute Resolution, Moscow

